

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

: CRIMINAL NO. 1:CR-98-00136-07

v.

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⋮  
⋮  
⋮

JEROME KENT

**MEMORANDUM AND ORDER**

Before the court is Defendant Jerome Kent's Motion for Relief From Judgment Pursuant to Rule 60(b)(6)<sup>1</sup> of the Federal Rules of Civil Procedure. Defendant alleges that this court's order of July 10, 2001, violated his Sixth Amendment rights when this court determined drug amounts and that he was in possession of a weapon. He claims that in accordance with the recent case of *Cunningham v. California*, 2007 U.S. LEXIS 1324, 75 USLW 4078 (Jan. 2007), those factors must be decided by a jury or admitted to by him.

California has a determinate sentencing law that allocated to judges the sole authority to find facts permitting the imposition of an upper term sentence. *Cunningham* held that placing sentence-elevating factfinding within the judge's province violates a defendant's right to trial by jury. *Cunningham*, however, reaffirmed *Apprendi v. New Jersey*, 350 U.S. 466, 490 (2000), which held that, under the Sixth Amendment, any fact (other than a prior conviction), that exposes a defendant to a sentence *in excess* of the *relevant statutory* maximum must be found

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<sup>1</sup>Defendant does not designate which subsection he is relying on for relief. Since he is relying on what he believes is a new rule of law that affects his sentence, the appropriate subsection is (6), "any other reason justifying relief from the operation of the judgment." None of the other subsections are applicable.

by a jury. Defendant's statutory sentence was a minimum of twenty years and a maximum of life. He was sentenced to a term of 324 months – within the statutory penalty. The *Cunningham* case has no impact on Defendant's sentence.

**IT IS THEREFORE ORDERED THAT:**

- 1) The motion for relief from judgment (doc. 449) is **DENIED**.
- 2) Any appeal from this order will be deemed frivolous.
- 3) The Clerk of Court shall close the file.

s/Sylvia H. Rambo  
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SYLVIA H. RAMBO  
United States District Judge

Dated: February 7, 2007.